



## Senate Judiciary Committee, March 5, 2013

### Opposition to Senate Bill 221

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Senate Bill 221 would amend current law that requires a one-time initial payment when registering under the Sex Offenders Registration Act to an annual fee of \$50 per registrant. Failure to pay is a 90 day misdemeanor. A determination of indigency is made by the registering agent.

The ACLU of Michigan opposes the imposition of this fee for several reasons:

1. We believe it is unconstitutional in violation of the ex post facto clause. Earlier this year, the US District Court for the Eastern District of Wisconsin (*Doe v. Raemisch*) ruled that a Wisconsin statute imposing a \$100 annual fee on registered individuals, whose convictions preceded the enactment of the statute authorizing the fee, is unconstitutional. The court said:
  - a. "...it is one thing to impose a fee on a defendant for services provided to him or on his behalf while he is on supervision or in custody. It is altogether a different matter to impose an annual fee on offenders who have been discharged from their sentences so as to offset the cost of providing a service that is intended solely for the benefit of the general public."
  - b. "To be sure, the State has a non-punitive purpose for wanting to collect money for such a purpose, but to single out only individuals who have prior convictions for sexual assaults as the sole source of such funds can only be seen as punitive."
  - c. "Though denominated a fee and intended to offset the costs of monitoring sex offenders, the annual assessment bears a striking resemblance to a fine. A fine, of course, is a traditional form of punishment for criminal conduct."
2. Lack of basis for the fee: There is neither an assessment of nor accounting of the cost to the state to maintain the sex offender registry. It would be prudent to know the fiscal impact on both the state and local law enforcement in maintaining and verifying registered offenders before we can accurately determine a fee structure. Such an analysis could and should be used to help determine whether the resources used to maintain the registry are actually having an impact on public safety.<sup>i</sup>
3. Overly burdensome: Michigan has over 40,000 (about 4,000 non-public) listed sex offenders. Many of them have a very difficult time finding and keeping work and living arrangements due in great part to the plethora of laws restricting their presence and movement.<sup>ii</sup> As a group they are experiencing more poverty. Many will not be able to afford the annual \$50 fee and there is no provision for granting a waiver for indigency. We would ask that if an individual makes a claim of indigency that is denied there is an appeal process, and also that the inability to pay is a defense in a prosecution of non-payment of the annual fee under this bill.

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<sup>i</sup> For example, from 2009-2012, the US Marshals Service spent \$6.4 million assisting in 949 sex offender enforcement operations, including 150,000 address verifications, yet studies show no clear effect on recidivism. (US Government Accountability Office, Report to the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, House of Representatives – Feb, 2013; <http://www.gao.gov/assets/660/652032.pdf>)

<sup>ii</sup> Officials from 5 of the 6 local probation offices identified as a major negative effect of SORNA difficulties in sex offenders' ability to reintegrate into the community due to lack of jobs and housing. (US Government Accountability Office, Report to the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, House of Representatives – Feb, 2013; <http://www.gao.gov/assets/660/652032.pdf>)